



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference	:	LON/00BG/LVM/2016/0020
Property	:	Canary Riverside Estate, Westferry Circus, London E14
Applicants	:	Octagon Overseas Ltd (1) CREM Ltd (2) Palace Church 3 Ltd (3) YFSCR Ltd (4) Yianis Hotels Ltd (5)
Representative	:	Trowers & Hamlins LLP
Respondent	:	Mr A Coates – Tribunal appointed manager
Interested Persons	:	Various leaseholders as per original application
Representative	:	Ms A Gourlay, Tanfield Chambers
Type of application	:	Application for permission to appeal
Tribunal members	:	Judge S McGrath (Chamber President) Luis Jarrero BSc FRICS
Date and venue of hearing	:	N/A
Date of decision	:	12th January 2018

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal is constituted in accordance with paragraphs 11 and 12 of the Senior President of Tribunal's practice statement on Composition of Tribunals in the Property Chamber, dated 15th November 2013. As Tribunal President I am satisfied that it would be impractical or cause undue delay for the chairman to decide the application for permission to appeal and accordingly I do so with the concurrence of the other Tribunal member, Mr Luis Jarrero.
2. The tribunal has considered the applicant's request for permission to appeal dated 27th October 2017 and determines that it will review its decision in respect of grounds 1, 2 and 3 of the application. Ground 4 is not a ground of appeal.

Reasons

3. This is an application for permission to appeal the decision of the First-tier Tribunal given on 29th September 2017 and sent to the parties on 3rd October 2017. The application is made by the freeholder and a number of head-lessees at the Canary Riverside complex who had been the applicants in proceedings seeking the variation of an order under section 24 of the Landlord and Tenant Act 1987 (the 1987 Act).
4. The application was received on 31st October 2017. In the application the respondents are named as "various leaseholders at Canary Riverside." In a letter also dated 31st October 2017, the Residents Association of Canary Riverside (RACR) pointed out that in fact Mr Coates, the manager appointed by the Tribunal under the 1987 Act, was the respondent to the proceedings in respect of which permission to appeal is sought. The RACR asked that this misapprehension be corrected. The Tribunal has received no objection to this course of action and the respondent is therefore named in this decision as Mr Coates.
5. The jurisdiction under Part II of the 1987 Act is intended as a problem solving jurisdiction. This is a complex case brought in respect of a complex development. The original management order made in 2016 was appealed to the Upper Tribunal and ultimately an application for variation of that original order was made to the FtT. It is regrettable that the management order is challenged once again. Although, as indicated below, it is accepted that there are some aspects of the September 2017 order that require revision and review it is to be hoped that there can be a sufficient measure of agreement between the parties to make any further contested revision as narrow as possible.
6. The grounds of appeal are set out in a document prepared by Mr Justin Bates of counsel and I deal with each in turn:

Ground 1 Dealing with assignments and applications for consent under the lease.

- (a) On 13th October 2017, the Tribunal received a letter from RACR asking the Tribunal to “provide explicit confirmation that, unless stated to the contrary within the management order, paragraphs 5 and 6 of the order should be taken to mean that Mr Coates is responsible for all aspects of the residential leases.” Additionally a request was made for two clerical errors to be corrected. In response the Tribunal issued a correction certificate dated 13th October 2017 and responded to the request for clarification by stating in a letter that the tribunal is unable to give legal advice but that for the purposes of clarifying the decision: the manager has stepped into the shoes of the landlord; the manager’s powers include the grant or refusal of permissions and the production of sales packs; the right to forfeit remains with the landlord.
- (b) It is contended that it is an error of law to make such assertions about the powers of the manager where such powers are not specified in the management order and no reasons justifying the assertions have been given. In any event it is said that no properly directed Tribunal could conclude that an appointed manager could be give those powers.
- (c) Permission to appeal on this ground is refused. The Tribunal’s letter does not form part of its decision and accordingly is not susceptible to challenge in the Upper Tribunal. It is acknowledged that the clarification given indicates the Tribunal’s view but it is not determinative. However, the Tribunal will review its decision to specifically consider and decide the issue and will do so under the power contained in section 9(1) of the Tribunal Courts and Enforcement Act 2007.

Ground 2: Duration of appointment

- (a) At paragraph 39 of its decision the Tribunal varied the duration of the order. Originally it was effective from 1st October 2016 for a period of three years. The new order was expressed to take effect from 1st September 2017 for a period of three years expiring on 31st August 2010.
- (b) It is contended that the Tribunal was wrong to extend the term of the order because it was not seized of the question and was only dealing with an application to reduce the term. No submissions were invited on a consideration to extend.
- (c) It was open to the Tribunal to consider that three years were required for the management order to be effective. If in fact early discharge of the order were appropriate a party could make an application for that purpose under section 24(9) of the 1987 Act. However, because the parties were not invited to make representations on the revised duration of the order there is a danger that there may have been a breach of natural justice and for that reason the Tribunal will review its decision.

Ground 3: Indemnities

- (a) The Tribunal decided that the landlord should indemnify the manager for any claims or losses made by occupiers which might arise because there are areas for which the manager must give notice to gain access. The Tribunal decided that the landlord should provide public liability indemnity for Mr Coates.
- (b) It is contended that the scope of the first indemnity is too wide. It is further contended that the second indemnity is unnecessary as public indemnity insurance in favour of Mr Coates has been procured.
- (c) The Tribunal will review the indemnities pursuant to its power under rule 55 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Ground 4: Omissions

- (a) It is contended that the Tribunal omitted to deal with a number of agreed matters and that there are three typographical errors.
 - (b) The Tribunal will seek the views of the parties on the itemised matters and will amend its decision if it is appropriate to do so.
7. The Tribunal will convene a case management conference to consider how best to implement this decision.

Siobhan McGrath

12th January 2018